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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. [redacted] 134

GEORGE F. COLLINS, JR., *Petitioner,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

Petitioner's Reply to Respondent's Memorandum in Opposition

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IN THE

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No. 1472

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Petitioner's Reply to Respondent's Memorandum in Opposition

Petitioner, in accordance wth Rule 24 of the Court's Rules of Practice replies to Respondent's Memorandum in Opposition to Petition for Writ for Certiorari which memorandum was served on Petitioner on June 24, 1968.

Respondent's memorandum bears docket number 134 rather than the correct docket number 1472.

Respondent contends that there are no reasons for granting review and further that the Court of Appeals correctly interpreted Oklahoma law.

Respondent's objections fail to recognize the fundamental differences between property rights in a divorce action in Oklahoma from those rights in Delaware. For example, in Oklahoma a spouse, in a divorce action *cannot* receive any property from the other spouse except where a wife might receive *alimony* out of the husband's property. (This is not a circumstance here for alimony was amply provided in cash payments to Beverley for life.) Accordingly, the only way Beverley could receive the Liberty stock by decree of the divorce court was as property jointly acquired during marriage which means she received nothing from George but only what was hers by statutory enactment in Oklahoma. This is why Respondent's objections err so severely in an attempt to gloss over the essence of the instant case by simply saying to this Court that here is another Davis situation (*United States* v. *Davis*, 370 U. S. 65) upon which this Court has already passed.

Oklahoma property interests in a divorce bear no resemblance to Delaware property interests in a divorce. This is the very reason why this Court should grant certiorari. It is a fair assumption that this Court meant what it said in *Davis, supra*, to the effect that differing tax results flow from differing property rights in various states. If local law, as interpreted by the highest court in Oklahoma, the Supreme Court of Oklahoma, holds that Beverley's interest which she received in the Liberty stock represented a vested, indefeasible property interest therein in a divorce situation, *Davis, supra*, is clearly distinguishable and this Court should so state.

In the petition for writ of certiorari (p. 11), Petitioner pointed out that this same question as presented to this Court was pending before the Supreme Court of Oklahoma. Appendix D of this Reply to Respondent's Memorandum con-

tains the brief of Petitioner here as filed in the Supreme Court and puts to rest, based on the latest pronouncements by that court, Respondent's contention that any such cases as *Jones* v. *Farris*, 180 Okla. 341, 69 P.2d 344; *Shook* v. *Shook*, 352 P.2d 376; *Roberts* v. *Roberts*, 357 P.2d 980 are in point here, or, particularly with respect to the last two cases, represent the law in Oklahoma. Cf. *Bouma* v. *Bouma* quoted at pages 14 and 15, Appendix D, decided in 1968. (See especially the last sentence of the quotation which clearly eliminates *Shook* and *Roberts* as authority here, where there is no mixture of alimony and property division.)

Finally, the clearest evidence of Respondent's misunderstanding of Oklahoma law on the pertinent subject is Respondent's comment on Beverley's participation in her husband's business (p. 4, first full paragraph). Compare this statement with the statement by the Supreme Court of Oklahoma in *Catron* v. *First National Bank and Trust Company of Tulsa* (Appendix D, p. 13). Even the performance of a "wife's customary duties during coverture is sufficient to entitle her to the benefits provided" by a statute referring to *her* interest in property jointly acquired during coverture.

What a judicial tragedy it would be if this Court should fail to grant the writ here sought and *thereafter* the Supreme Court of Oklahoma should determine that no taxable event occurred in Beverley's receipt of the Liberty stock because of her property interest therein under Oklahoma law. The very least this Court can do is to defer its action on the petition for writ of certiorari until the Supreme Court of Oklahoma has spoken.

Petitioner's opening brief in the Oklahoma case (Appendix D) was filed July 5, 1968. Unless extensions of time are granted for answer or reply briefs, the case in the Supreme Court of Oklahoma will be at issue by September 1, 1968. Under this Court's decision in *Second National Bank, Executor* v. *U. S.*, 387 U.S. 456, the opinion of the Supreme Court of Oklahoma dealing with an identical problem will be of paramount and controlling effect.

Respectfully submitted,

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Appendix D